

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TERA A. McMILLAN)	
Plaintiff)	
)	
v.)	Civil Action No: 2:07-cv-00001-WKW
)	
ALABAMA DEPARTMENT OF YOUTH SERVICES, et al.,)	(JURY DEMAND)
Defendants)	

**MOTION FOR SANCTIONS, INCLUDING COSTS, PURSUANT TO RULE 37
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

COMES NOW the Plaintiff, by and through undersigned counsel, and moves the Court for an Order imposing sanctions, pursuant to Rule 37(b)-(d), upon Defendant Alabama Department of Youth Services for willful failure to comply with the *Federal Rules of Procedure* and the *Guidelines for Civil Discovery of the U. S. District Court for the Middle District of Alabama*. In support of this motion, Plaintiff shows as follows:

Factual Background

1. Plaintiff submitted her initial discovery requests to the Defendant on or about June 22, 2007. The Defendant failed to respond or interject any objections within the thirty days allowed by Rules 33, 34 and 36, *F. R. Civ. P.* Following several requests for its overdue responses, Defendant finally submitted partial responses to the discovery on or about August 31, 2007 (See: *Doc. 27: pp. 7-17, Exhibits A-C*). The Defendant's responses were incomplete or missing in several instances, and privilege objections were interposed to some of the information requested. The Defendant failed to respond to the Plaintiff's subsequent request for identification, pursuant to Rule 26(b) (5), of any material being withheld under a claim of privilege. (*Doc. 27: p. 18, Exhibit D: ¶ 2*)

2. Plaintiff's counsel and his legal assistant visited the offices of the Defendant on September 25, 2007 to inspect and identify documents to be copied in response to the Defendant's objection that its responses were too "luminous" to be copied. Counsel for the parties discussed the outstanding discovery responses at this time, including the Defendant's unsupported assertions of privilege, and Plaintiff's counsel left a written list of Requests for which the Defendant had provided either no response or an incomplete response. (Exhibit A: Love Affidavit, p. 1, ¶ 3)

3. During the month of October 2007, legal assistants for the parties' counsel worked together to procure the materials marked for copying by the Plaintiff. Due to the numerous duplicative materials produced, as well as the failure to produce any of the materials noted as missing on September 25th, Plaintiff counsel's assistant provided a chart to the Defendant which listed each document with its Bates number that had been produced by the Defendant.¹ (Exhibit A: Affidavit, p. 2 ¶ 6; Exhibit B: DYS Production List pp. 1-4) By mid-November the Defendant had produced substantially all of the materials marked for copying at Plaintiff counsel's September inspection, but continually failed to produce responses to any of Requests identified as missing by Plaintiff's counsel. On November 26th, the deadline for submission of dispositive motions, the Plaintiff filed a Motion to Compel responses from the Defendant. (*Doc. 27*) Also on November 26, 2007, the Defendant submitted a Motion for Summary Judgment in which it relied upon many of the documents that it had refused to produce in response to Plaintiff's Requests. (*Docs. 28, 29*) The Defendant filed a Response to Plaintiff's motion to compel on December 11, 2007 in which it stated that the documents it had

¹ Each time the Defendant provided documents, the Plaintiff would find a number of duplications of previously produced documents. In many instances, the same document was produced three or more times. In all, 1185 of the 5545 pages of documents provided by the Defendant were duplicative.

failed to produce, some of which it had used in support of its Motion for Summary Judgment, had not been produced because they were “inadvertently omitted” because they were in another location. (*Doc. 39: p. 1, #1; p. 3, #5; and, p. 4, ##6-7*) The Court entered an Order on December 13, 2007 which granted in part the Plaintiff’s motion to compel and ordered the Defendant to provide the materials promised in Document 39 by December 20, 2007. (*Doc. 40*)

4. The Defendant produced an additional 455 pages of documents, 276 of which were duplicates of prior submissions, on December 12, 2007. (See Exhibit B: DYS Production List pp. 5-7, December 12 Delivery) After reviewing and cataloguing these responses, the Plaintiff faxed a letter to Defendant’s counsel on December 14th indicating to counsel those requests for which responses had not been provided, and requesting they be produced. (Exhibit C: letter dated 12/14/07) Defendant’s counsel did not respond to this letter, so on December 20 (the date the Court had ordered for compliance with the motion to compel), Plaintiff contacted the Defendant by phone to find out if the additional materials would be produced. Defendant’s counsel seemed to be angered by this inquiry and stated that the Defendant had already provided everything that had been requested and offered to allow counsel’s assistant to come to his offices to go through everything “again”. (Exhibit A: Affidavit, p. 3 # 9) Plaintiff counsel’s assistant, Gerald Love, went to the Defendant’s offices on that date in an effort to secure the remaining document responses.

5. Mr. Love arrived at Defendant’s offices and was informed that the missing documents were being copied. (Exhibit A: Affidavit, p. 3 # 10) Defendant’s counsel received copies of some documents and began to go through them with Mr. Love,

referencing each item in this counsel's letter of December 14, 2007. (Exhibit A: Affidavit, p. 4 # 11) Defendant's counsel produced a total of 582 additional pages, 489 of which were duplicates of documents previously provided, during the three hours that Mr. Love spent at his offices. (Exhibit B: DYS Production List, pp. 8-10) Defendant's counsel also failed to produce some documents which were identified as responsive to the requests, and, in one instance described below, refused to copy or permit to be copied a document that was produced for inspection (and which Defendant had cited in its dispositive motion (*Doc. 29-2*)).

6. Defendant's counsel produced a transcript of the Dismissal Review Hearings before Administrative Law Judge Weller as requested, but refused to permit the Plaintiff to have a copy, or to make a copy, of the transcript. Defendant's counsel informed the assistant that the Plaintiff could obtain a copy from the court reporter that transcribed the hearing, and telephoned the court reporter to order the transcript. When counsel was told that the transcript could not be prepared right away, he informed the reporter that "the first or second week of January" would be a sufficient time even though he knew that the Plaintiff had a January 3, 2008 deadline for response to his summary judgment motion. (Exhibit A: Affidavit, p. 4 # 12) Plaintiff's counsel was later successful in obtaining an electronic facsimile of the transcript from the reporter, but also received an invoice for \$1,623.85 for the copy. (Exhibit D: invoice dated 1/6/08)

7. On December 26, 2007, the Plaintiff received a letter from Defendant's counsel with the address of former employee L--- M---. The Defendant failed to respond to Plaintiff's initial request for this information, and subsequently claimed that it did not have any knowledge of a former employee with this name. Although Defendant's

counsel was provided with the married name of this individual in Plaintiff's letter of December 14 he repeated this claim on December 20, but admitted to her existence when confronted with records demonstrating that she had worked for the Defendant². (Exhibit B: letter dated 12/14/07, p. 2 ¶ 2; Exhibit A: Affidavit, p. 5 # 15)

Argument

The Defendant has failed to comply in good faith with the requirements of Federal Rule of Civil Procedure 34(b) which provides, in part, that party must respond in writing to requests for production of documents and other tangible things within 30 days, and shall make the documents available for inspection and copying by the requesting party. The Defendant failed to comply with this requirement, and has failed to provide full and complete production to requests even in its untimely supplied responses. Following several unsuccessful attempts to obtain complete responses, the Plaintiff filed her Motion to Compel which was granted in part, and denied in part, by the Court on December 13, 2007. (*Doc. 40*) Even though the Defendant promised to produce the additional documents in its response (*Doc. 39*) to the Plaintiff's Motion to Compel, the Defendant failed to complete its responses without a further demand by Plaintiff's counsel. (Exhibit B: letter dated 12/14/08; Exhibit A: Affidavit, p. 3 ##9, 10)

The Defendant's conduct during discovery in this case appears to have been a deliberate effort to sandbag the Plaintiff. The Defendant's claim that it failed to provide responsive documents because they were "inadvertently" in "another location" lacks any credibility. Apparently the other "inadvertent" location was the office of Defendant's counsel, since he used the material in his Motion for Summary Judgment. The

² This employee is also referenced several times in Defendant Hardy's March 23, 2006 deposition of the plaintiff in which this defendant's counsel participated. Defendant excerpted portions of this deposition as an exhibit on its dispositive motion. (*Doc. 29-3*)

Defendant's refusal to permit copying of a document (in its possession and utilized as an exhibit for its dispositive motion) and deliberate effort to prevent the Plaintiff from obtaining it until after her summary judgment response was due is particularly egregious.

Even with the most recent production in response to the Court's Order, the Plaintiff can have little confidence that she has been provided with full and complete disclosure as contemplated by the discovery rules. For example, the Defendant produced documents related to complaints of sex discrimination in its Middle District offices in response to the Court's Order, but the Plaintiff finds a statement within one complaint that the complainant had filed an earlier (January 2006) sexual harassment complaint – a complaint which has not been produced. (See Exhibit E: Grievance dated 10/22/07, p. 2 ¶ 4) Additionally, in her Report on Defendant Hardy's termination, ALJ Weller referred to Hardy's July 14, 2005 grievance against the Plaintiff, which has been produced by DYS (bates # 4117), and stated that the grievance had several attached pages of allegations by Hardy against the Plaintiff which have not been produced by the Defendant. (*Doc. 44: PX 16: ALJ Report p. 21 ¶ 2*) These are two examples of omitted responses the Plaintiff has reason to suspect this Defendant of withholding.

The Plaintiff notes additionally that this Defendant made broad assertions of privilege in its initial overdue responses to discovery, and has failed to provide any identification of materials that it may be withholding despite the Plaintiff's specific request for compliance with the provisions of *F. R. C. P. 26(b)(5)*. (*Doc. 27: p. 18, Exhibit D: ¶ 2*) Defendant counsel's assertion of "privilege" is suspect. In the Response to the Plaintiff's Motion to Compel, the Defendant asserts that it "waives the privilege" regarding its investigation of Plaintiff's EEOC charge. (*Doc. 39 p. 4 ¶ 2; p. 5 ¶ 3*) The

law is clear that there is no privilege for documents or information constructed or collected in the employer's investigation of an EEOC complaint, particularly when it seek to deny liability because it investigated and responded to a plaintiff's complaint. (*See Barfoot v. The Boeing Co.*, 184 F.R.D. 642, 645 (N.D. Ala. 1999) (...*incredible that the defendant would seek to deny the plaintiff access to the very investigation which, it contends, exonerates the company from liability on the plaintiff's EEO complaint.*)) The Plaintiff has been unable to determine what, if any, information or materials the Defendant may be withholding on a spurious claim of privilege due its refusal to comply with 26(b) (5).

Conclusion

The Plaintiff has shown that Defendant Alabama Department of Youth Services has engaged in a course of conduct which is contrary to the letter and the spirit of the rules governing discovery. Specifically, this Defendant has unnecessarily and unjustifiably multiplied the cost in time and money that the Plaintiff has had to expend to secure information to which she is entitled for the prosecution of her claims in this lawsuit. Additionally, this Defendant has withheld material evidence responsive to properly promulgated discovery requests which was readily known and available to it, and which it even utilized in seeking to have the Court to dispose of Plaintiff's claims on summary judgment. It appears on the record shown above that the Defendant is still withholding relevant discoverable materials.

WHEREFORE, these premises considered and for other such just cause as the Court may in its discretion find, the plaintiffs move this Honorable Court for an Order imposing sanctions, including her extraordinary costs for obtaining a copy of the

administrative hearing transcript withheld by the Defendant and her expenses incurred to obtain relevant discovery subsequent to the Court's Order of December 13, 2007, along with such other sanctions as the Court may in its discretion deem proper.

Respectfully submitted this 22nd day of January 2008.

/s/ JIMMY JACOBS

JIMMY JACOBS (JAC051)
Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using CM/ECF system and service will be perfected upon counsel of record following this the 22nd of January, 2008.

/s/Jimmy Jacobs

JIMMY JACOBS (JAC051)
Attorney for Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TERA A. McMILLAN
Plaintiff

v.

) Civil Action No: 2:07-cv-00001-WKW

ALABAMA DEPARTMENT OF
YOUTH SERVICES, et al.,
Defendants

) (JURY DEMAND)

AFFIDAVIT OF GERALD LOVE

1. My name is Gerald Love. I am a resident of the state of Alabama, of more than nineteen years of age, and make this declaration from my personal knowledge.

2. I have been assisting Ms. McMillan's attorney, Jimmy Jacobs, in the discovery process in her case against Michael Hardy and the Alabama Department of Youth Services. Specifically, I have received, reviewed and catalogued the documents and other things provided by the defendants in response to Mr. Jacobs's discovery requests.

3. On the morning of September 25, 2007, I accompanied Mr. Jacobs to the offices of DYS at Mt. Meigs to review documents made available for inspection and copying in response to Ms. McMillan's first discovery requests. Mr. Jacobs and I spent several hours going through the materials, and Mr. Jacobs provided a handwritten list of items that were missing to Mr. Perry. I returned in the afternoon and again on the next day to go through the materials marking specific documents that Mr. Jacobs wanted to have copied.

4. Throughout the month of October, I worked with Mr. Perry's legal assistant to obtain the materials that I had marked for copying, along with some additional related materials which were not in the original production. On each occasion that materials were provided, I had to go back to Mr. Perry's legal assistant about documents that were omitted. On at least one occasion I know that I asked about the items on the sheet Mr. Jacobs had left with Mr. Perry, but none of these documents were produced.

5. In late October, I was informed that DYS had provided all the documents that had been requested, but this was not correct. I participated in a telephone conference with Mr. Jacobs and Mr. Perry in which the missing requests were discussed. Mr. Perry insisted that he had made everything available during our initial visit, and that his assistant had copied everything that had been requested. I told Mr. Perry that there was still the matter of the items Mr. Jacobs had noted were missing in September, and they continued their discussion after I hung up.

6. In an effort to clarify what had been produced and what had not, I constructed a chart that listed each document, or group of documents, which had been produced by DYS and took it to Mr. Perry's assistant on November 7th. I also went over with her the remaining items that had not been produced. She told me that she didn't know anything about the missing documents and that she had copied all that Mr. Perry had told her to.

7. On November 26, DYS submitted a motion for summary judgment which relied upon excerpts from many of the documents that Ms. McMillan had been attempting to get since our visit in late September.

8. Even though we had discussed the missing materials, Mr. Perry submitted this chart as an exhibit to his response to Ms. McMillan's motion to compel in support of his statement that DYS had already provided everything that had been requested.

9. On December 12, DYS submitted additional materials in response to the motion to compel. These were still incomplete, and Mr. Jacobs wrote to Mr. Perry on December 14 detailing the omission and requesting complete materials. On December 20th, the date that the Court designated for production on the motion to compel, I called the legal assistant at DYS at Mr. Jacobs's request and asked about the remaining discovery responses. Mr. Perry came on the line and instructed me not to speak to his legal assistant any more; that I should refer all questions to him, and to "stop sending my assistant miming around in circles." I reminded Mr. Perry of the outstanding issues from the motion to compel (which he stated had been denied) and he informed me that everything already been turned over, and that I was creating unnecessary work for him and his office. After complaining some more, he started asking me what I wanted. I explained the general contents of the motion and the letter of December 14 detailing the outstanding items from our initial discovery request. Suddenly, he said I could come out and look through everything they had and, in a very threatening voice asked, "Are you coming out today?" I said "yes."

10. I arrived at the DYS legal office at about 1:00 p.m. and was surprised when Mr. Perry informed me that the additional materials requested were being copied. Within a couple hours he had changed from, "we've given you everything," to "you can come look for yourself", to "we are copying the documents."

11. After receiving some documents, Mr. Perry addressed each request on the December 14 letter, beginning with paragraph three, and identified the corresponding Bates stamped documents. I later discovered that the documents produced (approximately 500 pages) did not complete the requests in some instances, Mr. Perry's anger was obvious throughout this encounter and appeared to prevent him from concentrating on this task. In some instances, the documents provided did not fully address the request. In others, no responsive documents were provided at all. In still other instances, Mr. Perry produced additional documents but refused to allow me to have copies or to have copies made.

12. When Mr. Perry addressed paragraph four of the letter regarding transcripts of the appeal hearing, he brought in four bound volumes totaling 691 pages. He refused to copy it. He refused requests I made on at least two occasions to copy the document at my own expense. I offered to sign a hand receipt and return the documents the next day. He said no on each occasion. I-Ie said I could only view the documents at the table. After telling Mr. Perry this was tantamount to refusing to turn it over, he said I could call the recorder. I responded that it could take weeks to get it; I knew that Mr. Jacobs had to finish Ms. McMillan's response to the DYS motion for summary judgment by January 3rd. Mr. Perry said the recorder could do it tomorrow, pulled out a phone, and called her. Perry held phone away from his ear so I could hear the conversation. Without hesitation, Ms. Head said could not print a copy by Friday, December 21, 2007 citing the funeral of a local judge. She also said Monday was out because of a commitment she had to spend time at Judge Price's office. Perry said he understood her dilemma and didn't want to impose on her. He asked if it was "reasonable to expect it by the first or second

week of January. She said she could probably do it "by the end of next week" (December 29). Perry then said the first or second week of January would be fine. Throughout this conversation, Perry never asked me to participate or offer an opinion.

13. Paragraph five dealt with post-trial briefs. Mr. Perry pointed to a rubber-banded section of documents and indicated if there were any, they would be there. I showed Perry the reference on the first page of Judge Wellers order: "Following the hearing, parties requested permission to file post-trial briefs. Briefs were filed on or about July 25, 2006." Mr. Perry did not show me any briefs, or tell me there was such a document. When I insisted on seeing the briefs, he left and returned with three manila folders with tabs on which were handwritten numbers. He allowed me to review these and let me to place yellow post-it notes on several pages for copying. I did not see a Post-Trial brief dated July 25, 2006 in the documents that he allowed me to inspect.

14. Paragraph six referred to a hostile environment charge referenced in Mr. Hardy's personnel file. Mr. Perry stated that he didn't know anything about it and said he had no records related to it.

15. In response to paragraph eight, Mr. Perry said that he would have personnel look for the records requested. Previously, DYS had responded that there were no records for Lisa May, but I showed Mr. Perry work schedules that listed her as an employee along with later schedules that showed her married name of Alexander. These personnel records have not been produced as of this time.

16. Mr. Perry stated in response to all other items in the December 14 letter that he had already turned over what was requested.

17. During the three hours I spent at DYS, I was in Mr. Perry's presence for approximately two and a half hours. From the beginning, Mr. Percy insisted DYS had provided everything we asked for. Nevertheless, throughout the afternoon he kept giving me new documents or, in the case of the Appeal Hearing transcript, let me look at the document. On one occasion he said when referring to DYS, "We are the good guys here." He asked me several times to stipulate that DYS had turned over to us all of the discovery documents we had asked for in the first request. On at least two occasions, I told him I would go back to office, review and catalogue the documents. I also said Mr. Jacobs would have to make that decision, not me. As I was getting up to leave he asked me for a last time to stipulate that he had turned over everything requested. When I refused, he became livid. His voice rose, his jaw muscles tensed, and as he leaned over the table with his hands clenching the edge of the table, he told me if we came after that day and said we had not been given everything, "I will bring charges against you and Jimmy Jacobs."

FURTHER SAITH AFFIANT NOT.

-C^Un.Ull ^-^'.
Gerald T. Love

SWORN to and SUBSCRIBED before me on this the 0 day of December, 2007.

{Seal}

OTAR BLIC
My commission expires q-14-0



McMillan vs. DYS

<i>Bates Number</i>	<i>Subject</i>	<i>Request for Production</i>	
000002-000034	Dismissal Appeal & ALJ Recommended Order	#15	
000035-000111	Leave Reports (DYS 21) ITU and Mt. Meigs	#29	check for dups*
000112-000157	Rosters of employees attending training 2005-2007	#31	
000158-000166	Employee Address Information (none for Lisa May)	#34	
000167-000173	Employee Leave Balance (McMillan)	#35	
000176-000183	EEOC Charges (Both) and Dismissal and Notice of Rights	#22	Duplicate 180 1
000184	Lee's Letter of Warning, December 6, 2005 re: Failure to attend training and staff meeting	#22	
000185	DYS Policies & Procedures Training After One Year		
000186	DYS Policies & Procedures Staff Meetings		
000187-000220	Staton Interview of McMillan, December 1, 2006 (Retaliation)	#22	
000221-000236	McMillan's Performance Preappraisals and Appraisals 10/21/02-03/01/06	#22	Duplicates 235, 236 2
000237-000239	McMillan's Application to DYS	#22	
000240-000241	Unknown Employee Appraisals		
000242	McMillian's Letter to Spann 10/25/06		
000243-000333	Hardy's Administrative Hearing (transcript), November 15, 2005	#23	
000334-000510	Hardy's Personnel File	#23	
000511-000521	Hardy and McMillan Leave Request Forms (DYS 24)	#30	
000522	EEOC Notice of Charge (Retaliation)	#22	
000523	EEOC Charge (Retaliation)	#22	Duplicate 178 1
000524	EEOC Rules	#22	
000525	EEOC Invite to Mediation	#22	
000526	EEOC Consent to Mediate Form	#22	
000527	EEOC Assignment of Investigator	#22	Duplicate 183 1
000528-000635	Staton Interview of McMillan, Feb 16, 2006 (Sex Harassment)	#22	
000636-000640	Staton Interview of Hammond, March 24, 2006	#22	
000641-000644	Staton Interview of Elijah Hood, March 15, 2006	#22	
000645-000654	Staton Interview of Gregory Webster, March 14, 2006	#22	
000655-000673	Staton Interview of Veronica Harris, March 8, 2006	#22	
000674-000687	Staton Interview of Phyllis Rankins, March 10, 2006	#22	
000688-000700	Staton Interview of Sylvesta Lee, March 9, 2006	#22	Duplicates on this page: 5

000701-000703	Leave Reports (DYS 21) ITU	#29		
000704-00711	ITU Work Schedules 08/20/05 -03/31/06	#26		
000712-000713	McMillan Leave Request Forms (DYS Form 24)Dec 05, Jan 06	#30		
000714	Rankin's Letter to McMillan re: Concerns about employee Appraisal	#22		
000717	DYS Memo Complete Evaluation			
000715-000723	McMillan's Performance Preappraisals and Appraisals 03/01/05-03/01/07	#22	Duplicate 000229, 000719	2
000722	Lee's Letter of Warning, December 6, 2005	#22	Duplicate 000184	1
000723	McMillan's Performance Appraisal 03/01/04-03/01/05	#22	Duplicate 000223	1
000724-000729	Memos For Record from Lee, Hammond, Whitted, and Washington re: Contact with McMillan	#22	Copy our response DYS SJM**	
000730	Lee's Contact with Staff memo Jan 20, 2006 re: Insubordination	#22		
000731	Lee's Contact with Staff memo Nov 29, 2005 re: Failure to Attend	#22		
000732	Lee's Memo re: Mandatory A Training 2006	#22		
000733	McMillan's Memo For Record re: Dispute Performance Eval	#22		
000734-000735	McMillan's Performance Preappraisal (partial) 03/01/05-03/01/06	#22	Duplicate 000716	1
000736-000737	Subpoenas to appear at ALJ Hearing	#22		
000738	McMillan Training Certificate	#22		
000739	McMillian Pay Raise			
000740	McMillan's Training Certificate	#22	Duplicate 000738	1
000741	McMillan's Performance Appraisal (partial) 03/01/6-03/01/07	#22		
000742	Rankin's Memo to Spann re: McMillan's refusal to sign Appraisal	#22		
000743	Lee's Letter of Warning, December 6, 2005 re: Failure to attend training and staff meeting	#22	Duplicate 000184, 000722, 000746	3
000744	Performance Appraisal (partial) 03/01/05-03/01/06	#22	Duplicate 000717	1
000745-000761	Misc forms from McMillan's personnel file; most duplicative	#22	Duplicate 000185, 000186,	2
			Duplicates on this page:	12

			000221, 000222, 000176, 000177 (2), 000178, 000179, 000527, 000749	9
000762-000764 000766-000775	McMillan's Performance Preappraisals and Appraisals 10/21/02-03/01/07	#22	Duplicates 000220, 000223, 000224, 000225, 000227, 000228 000232, 000235 (2), 000236 (2)	11
000765	McMillan's Training Certificate	#22	Duplicate 000740	1
000776-000783	EEOC Charges (Both) and Dismissal and Notice of Rights	#22	Duplicates 000750, 000751, 000754 000752, 000755, 000757 000781	7
000784-000785	Subpoenas to appear at ALJ Hearing	#22	Duplicates 000736-000737	2
000786-000848	Security Affidavit Count for 3/4/06 and 3/5/06	#25		
000849-000863	Daily Time & Attendance Report ITU 09/01/06-09/15/06	#26		
000864-000894	Daily Time & Attendance Report ITU 08/01/06-08/31/06	#26		
000895-000920	Daily Time & Attendance Report ITU 07/01/06-07/31/06	#26	Missing 8-10 th , 22 nd , 30 th	
000921-000935	Daily Time & Attendance Report ITU 06/16/06-06/30/06	#26		
000936-000950	Daily Time & Attendance Report ITU 06/01/06-06/15/06	#26		
000951-000981	Daily Time & Attendance Report ITU 05/01/06-05/31/06	#26		
000982-000996	Daily Time & Attendance Report ITU 04/16/06-04/30/06	#26		
000997-001011	Daily Time & Attendance Report ITU 04/01/06-04/15/06	#26		
001012-001023	Daily Time & Attendance Report ITU 03/18/06-03/31/06	#26	Missing 21 st , 23 rd	
001024-001037	Daily Time & Attendance Report ITU 03/04/06-03/17/06			
001038-001051	Daily Time & Attendance Report ITU 03/04/06-03/17/06	#26	Duplicates 001024-001037	14
001052-001065	Daily Time & Attendance Report ITU 03/04/06-03/17/06	#26	Duplicate 001038-001051	14
001066-001076	Daily Time & Attendance Report ITU 02/18/06-02/28/06	#26		
001077, ¹ 1079-1080	Daily Time & Attendance Report ITU 03/01/06-03/03/06	#26		
001081-001094	Daily Time & Attendance Report ITU 02/18/06-03/03/06	#26	Duplicates 001066-001077 001079-001080	12 2
001095-001105	Daily Time & Attendance Report ITU 02/18/06-02/28/06	#26	Duplicates 001066-001076	11
			Duplicates on this page:	83

001106-001108	Daily Time & Attendance Report ITU 03/01/06-03/03/06	#26	Duplicates 001077-001080	4
001109-001138	Daily Time & Attendance Report ITU 04/01/06-04/30/06	#26	Duplicates 000997-001011	15
001139-001168	Daily Time & Attendance Report ITU 04/01/06-04/30/06	#26	Duplicates 001109-001138	30
001169-001183	Daily Time & Attendance Report ITU 05/01/06-05/15/06	#26	Duplicates 000951-00965	15
001184-001211	Daily Time & Attendance Report ITU 05/01/06-05/28/06	#26	Duplicates 001169-001183	15
			000951-000963	13
001212-001227 ²	Daily Time & Attendance Report ITU 06/01/06-06/15/06	#26	Duplicates 000936-000950	15
001228-001242	Daily Time & Attendance Report ITU 06/01/06-06/15/06	#26	Duplicates 001212-001227	16
001243-001257	Daily Time & Attendance Report ITU 06/16/06-06/30/06	#26	Duplicates 000921-000935	15
001258-001272	Daily Time & Attendance Report ITU 06/16/06-06/30/06	#26	Duplicates 001243-001257	15
001273-001298	Daily Time & Attendance Report ITU 07/01/06-07/31/06	#26	Duplicates 000895-000920	26
			Missing 8-10 th , 22 nd , 30 th	
001299-001324	Daily Time & Attendance Report ITU 07/01/06-08/01/06	#26	Duplicates 001273-001298	26
			Missing 8-10 th , 22 nd , 30 th	
001325-001356 ³	Daily Time & Attendance Report ITU 08/01/06-05/31/06	#26	Duplicates 000864-000894	31
001357-001386	Daily Time & Attendance Report ITU 09/01/06-09/30/06	#26	Duplicates 000849-000863	15
001387-001397	Security Gate Log of employees entering and leaving 06/20/06	#25		
001398-001409	Security Gate Log of employees entering and leaving 06/21/06	#25		
001410-001419	Security Gate Log of employees entering and leaving 06/19/06	#25	missing several pgs	
001420-001431	Security Gate Log of employees entering and leaving 06/18/06	#25		
001432-001442	Security Gate Log of employees entering and leaving 06/16/06	#25		
001443-001454	Security Gate Log of employees entering and leaving 06/17/06	#25		
001455-001466	Security Gate Log of employees entering and leaving 06/15/06	#25		
001467-001480	Security Gate Log of employees entering and leaving 06/14/06	#25		
001481-001492	Security Gate Log of employees entering and leaving 06/13/06	#25		
001493-001504	Security Gate Log of employees entering and leaving 06/09/06	#25		
001505-001516	Security Gate Log of employees entering and leaving 06/10/06	#25		
001517-001528	Security Gate Log of employees entering and leaving 06/11/06	#25		
001529-001538	Security Gate Log of employees entering and leaving 06/12/06	#25	missing last two pgs	
001539-001548	Security Gate Log of employees entering and leaving 06/07/06	#25	out of order first pg 1609	
001549-001560	Security Gate Log of employees entering and leaving 06/08/06	#25		
001561-001572	Security Gate Log of employees entering and leaving 06/04/06	#25		
001573-001584	Security Gate Log of employees entering and leaving 06/02/06	#25	Duplicates on this page:	251

001585-001596	Security Gate Log of employees entering and leaving 06/05/06	#25		
001597-001608	Security Gate Log of employees entering and leaving 06/06/06	#25	1609 see 6/7/06	
001609-001610	Security Gate Log of employees entering and leaving 06/07/06	#25		
001623-001634	Security Gate Log of employees entering and leaving 06/02/06	#25		
001611-001622	Security Gate Log of employees entering and leaving 06/01/06	#25		
001635-001646	Security Gate Log of employees entering and leaving 05/11/06	#25		
001647-001657	Security Gate Log of employees entering and leaving 05/15/06	#25		
001658-001669	Security Gate Log of employees entering and leaving 05/10/06	#25		
001670-001681	Security Gate Log of employees entering and leaving 05/09/06	#25		
001682-001693	Security Gate Log of employees entering and leaving 05/08/06	#25		
001694-001705	Security Gate Log of employees entering and leaving 05/07/06	#25		
001706-001717	Security Gate Log of employees entering and leaving 05/06/06	#25		
001718-001729	Security Gate Log of employees entering and leaving 05/05/06	#25		
001730-001741	Security Gate Log of employees entering and leaving 05/03/06	#25		
001742-001753	Security Gate Log of employees entering and leaving 05/04/06	#25		
001754-001765	Security Gate Log of employees entering and leaving 05/02/06	#25		
001766-001777	Security Gate Log of employees entering and leaving 05/01/06	#25		
001778-001789	Security Gate Log of employees entering and leaving 06/22/06	#25		
001790-001801	Security Gate Log of employees entering and leaving 11/11/05	#25		
001802-001813	Security Gate Log of employees entering and leaving 11/29/05	#25		
001814-001849	Training material re: Student Self-Harm 04/26/07	#31		
001850-001958	Training schedules and sign-in sheets	#31		
001959-001999	DYS Leave Request Forms (DYS Form 24) Aug-Nov 2005	#30		
002000-002157	Training schedules and sign-in sheets	#31		
002158-002816 ⁴	Security Gate Log of employees entering and leaving 03/01/06-04/29/06, 11/16-18/05	#25		
002817-002827	Leave Reports (DYS 21) ITU and Mt. Meigs	#29	Missing	
002828-003406	Leave Reports (DYS 21) ITU and Mt. Meigs	#29		
003407-003432	DYS Leave Request Forms (DYS Form 24) Jan-May 2006	#30		
003407-003440	DYS Policies & Procedures		Duplicate numbering	33
003440-003465	DYS Leave Request Forms (DYS Form 24) Jan-May 2006 Dortch, Griner, Hammond, Hood, M. Johnson, S. Jones, E. Smith, G. Webster and F. Whitted.	#30	Duplicates of 3407-3432	26
003466-003569	Lee's personal file of McMillan	#22	Duplicates on this page:	59

003570-003597	Transcription of Sylvesta Lee's tape recordings	
003598-003751	Daily Time & Attendance Report Paige Hall 12/25/04-05/27/05	#26 Overlapping numbering
	Missing Daily Time & Attendance Report Paige Hall 05/28/05-06/12/05	
003752-003765	Daily Time & Attendance Report Paige Hall 06/11/05-06/24/05	#26
003766-004015	Daily Time & Attendance Report ITU 06/25/05-02/17/06	#26
004016-004112	Daily Time & Attendance Report ITU 10/01/06-12/31/06	#26
September and October Deliveries: 4108 pages, 410 duplicates		

December 12, 2007 Delivery

004113	Spann Memo to Wood 7/19/05	#23		
004114	Spann's questions for Hardy	#23		
004115-004116	Spann's interview (transcript) with McMillan 06/15/05	#23		
004117	Hardy Letter to Spann 07/14/05 Grievance	#23		
004118- 004121	Staton's Investigative Summary of EEOC 130-2006-01336 03/31/2008	#22		
004122-004127	EEOC Charges (Both)	#22	Duplicate 000522-000527	6
004128-004230	Staton Interview of McMillan, Feb 16, 2006 (Sex Harassment)	#22	Duplicate 000528-000635	8
004231-004235	Staton Interview of Hammond, March 24, 2006	#22	Duplicate 000636-000640	5
004236-004239	Staton Interview of Elijah Hood, March 15, 2006	#22	Duplicate 000641-000644	4
004240-004248	Staton Interview of Gregory Webster, March 14, 2006	#22	Duplicate 000645-000654	10
004249-004266	Staton Interview of Veronica Harris, March 8, 2006	#22	Duplicate 000655-000673	19
004267-004279	Staton Interview of Phyllis Rankins, March 10, 2006	#22	Duplicate 000674-000687	14
004280-004290	Staton Interview of Sylvesta Lee, March 9, 2006	#22	Duplicate 000688-000700	13
004291-004293	Leave Reports (DYS 21) ITU	#29	Duplicate 000702-000703	2
004294-004301	ITU Work Schedules	#26	Duplicate 000704-000711	8
004302-004303	McMillan Leave Request Forms (DYS Form 24) Dec 05, Jan 06	#30	Duplicate 000712-000713	2
004304	Rankin's Letter to McMillan re: Concerns about Employee App	#22	Duplicate 000714	1
004305-004311	McMillan's Performance Preappraisals and Appraisals 03/01/05-03/01/07	#22	Duplicate 000715-000721	7
Duplicates on this page:				99

004312	Lee's Letter of Warning, December 6, 2005	#22	Duplicate 000722	1
004313	McMillan's Performance Appraisal 03/01/04-03/01/05	#22	Duplicate 000723	1
004314-004319	Memos For Record from Lee, Hammond, Whitted, and Washington re: Contact with McMillan	#22	Duplicate 000724-000729	6
004320	Lee's Contact with Staff memo Jan 20, 2006 re: Insubordination	#22	Duplicate 000730	1
004321	Lee's Contact with Staff memo Nov 29, 2005 re: Failure to Attend	#22	Duplicate 000731	1
004322	Lee's Memo re: Mandatory A Training 2006	#22	Duplicate 000732	1
004323-004324	Staton's Investigative Summary of EEOC 130-2006-01336 02/27/2007	#22		
004325-004332	EEOC Charges (Both) and Dismissal and Notice of Rights	#22	Duplicate 000176-000183	8
004333	Lee's Letter of Warning, December 6, 2005	#22	Duplicate 000184	1
004334-004335	DYS Policy and Procedures		Duplicate 000185-000186	2
004336-004367	McMillan's Performance Preappraisals and Appraisals 10/21/02-03/01/07	#22	Duplicate 000221, 000223-000236	15
004368-004373	McMillian's DYS Application	#22	Duplicate 000237-000239	3
004374-004377	Hammond and Webster Performance Appraisals	#22	Duplicate 000240-000241	2
004378-004379	Change of Beneficiary Form-Gregory Webster			
004380	McMillan's Letter to Spann 10/25/06	#22	Duplicate 000242	1
004381	Spann Memo to Wood 7/19/05	#22	Duplicate 004113	1
004382	Spann's questions for Hardy	#22	Duplicate 004114	1
004383-004384	Spann's interview with McMillan 06/15/05	#22	Duplicate 004115-004116	2
004385	Hardy Letter to Spann 07/14/05 Grievance	#22	Duplicate 004117	1
004386-004428	Spann's Taped Interview with Hardy (transcript) 06/28/05	#23		
004429-004431	Calendar's Findings Administrative Fact Finding Hearing (11/25/05) 12/8/05	#23		
004432-004521	Hardy's Administrative Hearing (transcript), November 15, 2005	#23	Duplicate 000243-000333	91
004522-004554	Dismissal Appeal & ALJ Recommended Order	#15	Duplicate 000002-000034	33
004555	Spann Memo to Wood 7/19/05 (DYS exhibit 1 Adm. Fact Finding Hearing)	#22	Duplicate 004113	1
			Duplicates on this page:	173

004556	Hardy Letter to Spann 07/14/05 Grievance (DYS exhibit 2 Adm. Fact Finding Hearing)	#23	Duplicate 004117	1
004557-004558	DYS Policy and Procedures (Hardy exhibit 1 Adm. Fact Finding Hearing)			
004559	Paige Hall Staff Memo Supporting Hardy 6/21/05 (Hardy exhibit 3 Adm. Fact Finding Hearing)	#23		
004560	Harvest, Ellis Memo Supporting Hardy 6/21/05 (Hardy exhibit 4 Adm. Fact Finding Hearing)	#23		
004561	April Ford Memo Tour 11/8/05 (Hardy exhibit 5 Adm. Fact Finding Hearing)	#23		
004562-004563	Robert Lee Memo Tera and Car Oct 04 (Hardy exhibit 6 Adm. Fact Finding Hearing)	#22		
004564	Hardy Letter to Spann 7/14/05 Sex Harassment (Hardy exhibit 7 Adm. Fact Finding Hearing)	#23	Duplicate 004564	1
004565	Hardy Memo to Ray Grievance 4/20/00 (Hardy exhibit 8 Adm. Fact Finding Hearing)	#36	Duplicate 000405	1
004566	Hardy Memo to Spann Sex Disc Hostile Work Env. 1/18/00 (Hardy. exhibit 9 Adm. Fact Finding Hearing)	#36	Duplicate 000413	1
004567	Hardy Memo to Tyler Job Performance (Hardy exhibit 10 Adm. Fact Finding Hearing)	#36	Duplicates on this page:	4

December 12, 2007 Delivery: 455 pages, 276 duplicates

Retrieved from DYS December 19, 2007

004568-004569	Introduction of Agency Exhibits (5) for appeal hearing 3/16/06	#23		
004570-004571	EEOC Charge, Sexual Harassment DYS Exhibit 1	#23	Duplicates 000181, 000182	2
004572	Hardy Letter to Spann 7/14/05 Grievance DYS Exhibit 2	#23	Duplicate 004117	1
004573-004597	Staton Interview of McMillan, Feb 16, 2006 (Sex Harassment) DYS Exhibit 3 Note reverse sides not bates stamped	#22	Duplicates 000528-000635	108
004598-004640	Spann's Taped Interview with Hardy (transcript) 06/28/05 DYS Exhibit 4	#23	Duplicates 004386-004428	43
004641-004657	Hardy's Administrative Hearing (transcript), November 15, 2005 DYS Exhibit 5	#23	Duplicates 000243-000333	91
004658	Hardy Letter to Spann 07/14/05 Sexual Harassment DYS Exhibit 7	#23	Duplicate 004564	1
004659-004661	Calendar's Findings Administrative Fact Finding Hearing (11/25/05) 12/8/05 DYS Exhibit 6	#23	Duplicates 004429-004431	3
004662	Graham Letter to Stokes Re: Michael Hardy Oral Argument 09/27/07	#23		
004663-004665	Perry Letter to Stokes Discovery Requests 02/27/06	#23		
004666	Stokes Letter to Perry Discovery Requests 02/24/06	#23		
004667	Carney Letter to Stokes Discovery Requests 02/09/06	#23		
004668	Hardy's Notice of Claim and Request for Separation Information 01/31/06			
004669	Scheduling Order for Hardy's Appeal to Personnel Board	#23		
004670	Wood's Letter of Dismissal to Hardy 01/06/06	#23	Duplicate 000337	1
004671-004673	Calendar's Findings Administrative Fact Finding Hearing (11/25/05) 12/8/05	#23	Duplicates 004429-004431	3
004674	Spann Memo to Wood 7/19/05	#22	Duplicate 004113	1
004675	Spann's questions for Hardy	#23	Duplicate 004114	1
004676-004477	Spann's interview (transcript) with McMillan 06/15/05	#23	Duplicates 004115-004116	2
004678	Hardy Letter to Spann 07/14/05 Grievance	#23	Duplicate 004117	1
004679-004681	Perry Letter to Stokes Rescheduling Hardy's Adm. Hearing	#23	Duplicates on this page:	258

	11/14/06			
004682	Stokes Letter to Perry Rescheduling Hardy's Adm. Hearing	#23		
004683	Wood Letter to Hardy Scheduling Hardy's Adm Hearing	#23	Duplicate 000337	1
	11/04/06			
004684	Wood Letter to Hardy Scheduling Hardy's Adm Hearing	#23	Duplicate 004683	1
	11/04/06			
004685	Davis' Memo to Wood Recommending Termination w/note	#23		
004686	Davis' Memo to Wood Recommending Termination 11/03/06	#23	Duplicate 000339	1
004687-004688	Hardy Letter to Spann 07/14/05 (Investigation)	#23		
004689	Hardy Letter to Spann 07/14/05 (Grievance)	#23	Duplicate 004117	1
004690	Hardy Letter to Spann 07/14/05 (Sexual Harassment)	#23	Duplicate 004464	1
004691	Hardy Letter to Spann (Reassignment of Position)	#23		
004692	Hardy Letter to Tyler 06/23/97 (Job Performance)	#23	Duplicate 004567	1
004693	Hardy Letter to Tyler 06/23/97 (Job Performance) w/Tyler's Note	#23		
004694	Hardy Letter to Samuel 06/23/97 (Stress Workshop)	#23		
004695	Hardy Letter to Samuel 06/23/97 (Stress Workshop) w/Samuels Note	#23		
004696	Tyler Letter to Hardy 06/24/97 (Job Performance Stress Workshop)	#23		
004697	Tyler Letter to Hardy 06/24/97 (Letter of Reprimand)	#23	Duplicate 004696	1
004698	Hardy Letter to Samuel 06/20/97 (Letter of Reprimand)	#23		
004699	Hardy Letter to Tyler 09/09/98 (Reassignment)	#23		
004700	Hardy Letter to Spann Sex Disc Hostile Work Env. 1/18/00	#23	Duplicate 000413	1
004701	Hardy Letter to Spann Grievance. 1/18/00	#23	Duplicate 000411	1
004702	Hardy Letter to Spann Ref 000412 1/20/00	#23		
004703	Samuel Letter to Hardy Ref 000411 01/21/00	#23		
004704	Hardy Letter to Tyler 03/20/00 Performance Score	#23	Duplicate 000405	1
004705	Tyler Letter to Ray 03/23/00 Performance Score	#23		
004706	Hardy Letter to Ray 03/28/00 Performance Score	#23		
004707	Ray Letter to Hardy 04/20/00 Grievance Procedure Step B	#23	Duplicate 000400	1
004708	Graham Letter to Stokes Re: Michael Hardy Oral Argument	#23	Duplicate 004662	1
	09/27/07			
004709	Graham Letter to Stokes Re: Michael Hardy Oral Argument		Duplicates on this page:	12
	09/20/07			

004710	Graham Letter to Stokes Re: Dismissal Appeal 08/10/07			
004711	Stokes Letter to Graham Re: Dismissal Appeal 08/08/07			
004712	Graham Letter to Stokes Re: Dismissal Appeal 08/01/07	#23	Duplicate 000002	1
004713-004716	Perry's Post-Trial Brief to Weller 08/11/07			
	Note Hardy's brief is at 5060			
004717	Stokes Cover Letter to Weller for Pre-Trial Brief 07/25/06	#23		
	Note find Brief **			
004718	Perry's Cover Letter to Weller for Taped Interview w/Harvest	#23		
004719-004723	Correspondence About Wood's Availability for Testimony	#23		
004724	Carney Memo Re: Telecon w/Rashin Farley	#23		
004725-004730	Correspondence About Depos and Testimony	#23		
004731-004741	Carney Letter to Stokes w/Discovery Documents	#23	Duplicates 10 pages	10
004742-004752	ITU Leave Reports (DYS 21) 08/20/05-03/31/06	#26	Duplicate 004291-004301	11
004753-004754	McMillan Leave Request Forms (DYS Form 24) Dec 05, Jan 06	#30	Duplicate 004302-004303	2
004755-004757	Notice of Deposition Stokes to Birdie Montgomery	#23		
004758	Glarrow Letter to Stokes Re: Dates for Hardy's Hearing	#23		
004759	Perry Letter to Montgomery Delaying Deposition Date 3/24/06	#23		
004760	Perry Letter to Harris Delaying Deposition Date 3/24/06	#23		
004761	Perry Letter to McMillan Delaying Deposition Date 3/24/06	#23		
004762-004965	Miscellaneous		Duplicates 202 pages	202
004966	Statement of Facts Termination Appeal Hearing	#23		
004967-005059	Discrimination and Harassment Incidents at DYS	#37		
005060	Copy error, first page of Post-Trial Brief		Duplicate 005133	1
005061-005062	Hardy's Reply to DYS Response re: Eugene Smith 5/22/06	#23		
005063-005064	Hardy's Reply to DYS Response re: Eugene Smith	#23	Duplicate 005061-005062	2
005065-005066	DYS Response to Hardy Motion re: Eugene Smith 05/18/06	#23		
005067	Hardy's Request for Change of Date 05/16/06	#23		
005068-005070	Hardy's Motion for Protection re: Eugene Smith 05/04/06	#23		
005071-005075	DYS Motion In Limine 05/04/06	#23		
005076-005132	Discrimination and Harassment Incidents at DYS	#37		
005133-005149	Hardy's Post-Trial Brief 08/08/07	#23	Duplicates on this page:	229
December 19, 2007 Delivery: 582 pages, 499 duplicates				

December 26, 2007 Delivery:

005150-005164	Daily Time & Attendance Report ITU 06/11/05-06/24/05	#26
005166		
005167-005549	Daily Time & Attendance Report Trustee 06/11/05-06/30/06	#26
005165		

December 26, 2007 Delivery: 400 pages, zero duplicates

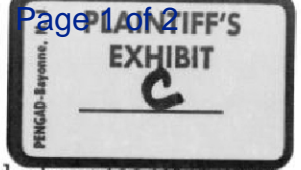
All Deliveries: 5545 pages, 1185 duplicates

¹ 1078 skipped

² 1221 skipped

³ Duplicate 8/1/06 pages

⁴ Duplicate 2158 pages



JIMMY JACOBS, L.L.C.

Attorneys at Law

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Fax (334)215-1198
jacobslawoffice@charter.net

14 December 2007

VIA FACSIMILE AND REGULAR MAIL

T. Dudley Perry, Jr.
Deputy Attorney General
Post Office Box 66
Mt. Meigs, AL 36057

Re: McMillan v. Dept. of Youth Services, et al.; USDC Middle Alabama; CV No: 2:07-cv-001

Dear Dudley,

I have had the opportunity to go over the additional responses to the Plaintiff's First Discovery Requests which your secretary brought by Wednesday evening. The responses are still incomplete in several instances. In addition some of the material supplied was duplicative, both within the production and of prior production. Please supply the materials listed below which are responsive to the requests. I am also sending

Request No. 10, 12 & 37: All communications and/or documents related to the Michael Hardy between the dates of January 7, 2006 and July 25, 2006.

Request No. 10, 12 & 37: Pre-trial briefs and/or other communications regarding the Dismissal Hearings conducted by Administrative Law Judge Weller on May 8, 2006 and June 10, 2006

Request No. 10, 12 & 37: DYS exhibits 1-7 introduced at the Dismissal Hearings before Administrative Law Judge Weller.

Request No. 10, 12 & 37: Transcript of Dismissal Review Hearings before Administrative Law Judge Weller.

Request No. 10, 12 & 37: All post-trial briefs to Administrative Law Judge Weller filed on or about July 25, 2006.

Request No. 23 & 36: All records and reports related to the hostile environment charge referenced in exhibit number 9 of the November 2005 hearing.

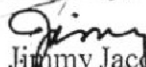
Request No. 23, 24, 32 & 33: All e-mails, memos, and correspondence related to the investigations referenced in these responses.

Request No. 34(g): the last known address and phone number for employee Lisa May ('nee Lisa Alexander) who worked at Harris Hall for a period of at least, but not limited to, August 2002-July 2003.

Request No. 38: All complaints of sexual harassment, sex/gender discrimination, retaliation and/or any EEOC or OCR complaints filed by or against current or former employees of DYS in the Middle District of Alabama.

Thank you in advance for your cooperation in this matter. I look forward to receiving these materials.

Sincerely,


Jimmy Jacobs

C: James Eldon Wilson, Esquire



**LAURA A. HEAD
COURT REPORTER
3506 FOXHALL DRIVE
MONTGOMERY, AL 36111
334-286-4938 or 334-202-4851**

January 6, 2008

Jimmy Jacobs, Esq.
4137 Carmichael Road, Ste. 100
Montgomery, AL 36106

RE: Michael Hardy Termination
Appeal Hearing held on
May 8 & July 10, 2006

1 copy of 691 pages @ \$2.35 per page. \$1623.85

Thank you,

A handwritten signature in cursive script that reads "Laura A. Head".

Laura A. Head
Court Reporter



October 22, 2007

OCT 24 2007

COPY

To Whom It May Concern:

I am submitting my grievance to you based upon the following:

On Friday, October 19, 2007 towards the end of my 6am to 2pm my shift supervisor Mr. W~~ood~~, approached me stating that Ms. U~~nderwood~~ had given him something to give to me but he was instructed to do so on the next day.

On Saturday, October 20, 2007 I received my performance appraisal. The appraisal was presented to me by 1st shift supervisor W~~illie Wood~~. Mr. W~~ood~~ presented me with an evaluation that showed I partially met standards. My score was 10.5. When questioned about the overall evaluation, he, Mr. W~~ood~~, could provided no explanation for marking the attendance, cooperation with co-workers and the compliance with rules in the work habits section of my appraisal as unsatisfactory. I received several rating scores of 1 which he could not explain. When I question Mr. W~~ood~~ on why the above items were marked he stated, "I don't know." His answer to my question along with his statement from the previous day regarding him receiving something to give to me from Ms. U~~nderwood~~ caused me to question whether or not he was my rating supervisor for this appraisal. On the appraisal presented to me I noticed that the rating supervisor had not been identified. According to the Alabama State Personnel Procedures Manual Section VII page 102, "An employee's immediate supervisor should conduct the appraisal process. The person most familiar with the work being performed by the employee is considered the rating supervisor. The appraisal should be objective and accurate because the supervisor has been monitoring behavior and communicating performance feedback during the appraisal period. I am well aware of why I received a seven point reduction for my disciplinary score; however, the additional points deducted are unjustifiable.

In regards to my attendance the only days I missed from work were sick days which I supplied medical documentation for. There has not been any situation at work that I have shown a lack of cooperation with co-workers, nor has any situation been documented in my personnel file. There has not been any situation at work where I have been out of compliance with the rules, nor has any situation been documented in my personnel file. There has not been any situation at work where I have not supervised the students in my care, nor has any situation been documented in my personnel file. There has not been any situation at work where I have experienced a crisis and did not intervene, nor has any situation been documented in my personnel file.

COPY

005033

On July 30, 2007 I participated in a counseling session with assistant supervisor, Derrick Sankey, regarding my neglect of job duties. When I questioned Mr. S█████ about what I was doing to neglect my duties, he stated that as far as he could see I had done nothing wrong. He also stated that Ms. U█████ had instructed him to have the "counseling session" with me. At the end of the session I declined to sign the document stating that I was aware that I had been neglectful of my job duties because the area(s) of my non-performance had not been identified. I stated to Mr. S█████, I had no problem signing the document if my negative actions could be explained to me and specifically included within the document. No follow-up counseling session has ensued to include specific areas of non-performance. I have not been provided with a copy of the documentation from the coaching session. According to the Code of Alabama section 36-26-27.1, in the event that the information is not provided to the employee within ten days as herein required. The reprimands or notes shall be removed from the employee's file and shall not be used against the employee in any future proceeding or disciplinary action.

On August 3, 2007 I participated in a meeting with Mr. D█████ and Ms. U█████ regarding a grievance that I filed against Ms. U█████ on July 27, 2007 for her use of abusive language toward me. The entire meeting was recorded on audio tape with Mr. D█████'s approval. (A copy of the recording was provided to ADYS investigator, Mr. S█████, during his inquiry of a sexual harassment claim I filed one year prior.) During the meeting, Ms. U█████'s attitude was extremely hostile and unprofessional. At the end of the session, Mr. D█████ stated his expectation that all supervisors were to address employees in a respectful manner. Since the meeting with Mr. D█████, Ms. U█████ has not spoken to/with me.

On Monday, October 15, 2007 I made an inquiry about a change of off day request that I had submitted back in June of this year. My immediate supervisor, Mr. W█████ informed me that Ms. U█████ was the person who made the final decision on off day changes and he would speak with her regarding my request. On October 19, 2007 I received a memorandum from Ms. U█████ denying my request.

In my opinion, the additional points deducted from my performance appraisal were done so in malice as a form of retaliation for grievances filed against Autauga Administration this year in addition to an unwanted inquiry on August 9, 2007 from ADYS investigator, Mr. A█████ S█████, regarding a sexual harassment complaint I filed in January 2006 that Autauga Administration did not follow ADYS policy and procedures on. In July of this year Autauga administration attempted to suspend me for leaving work early due to an illness of which I provided documentation for from my physician when I returned to work from extended sick leave. The suspension was rescinded by ADYS Deputy Director, T█████ D█████, on July 17, 2007 and I was issued a letter of reprimand instead.

While I am aware that this complaint will not remedy all of the points deducted from my evaluation I would like the opportunity to have a fair and nonbiased re-evaluation conducted by my immediate supervisor.

005035

I have included copies of all of the correspondence that I have sent and received for the actions stated above.

Please let this letter serve as the first step of my grievance against Autauga Administration for retaliation.

Sincerely,



E. J. [illegible]
Youth Services Aide
Autauga Campus

C: Mr. J. Walter Wood
Mr. Tim Davis
Mr. G. Wayne Booker
Ms. Debra Spann
Mr. Alan Staton
Mr. Keith Duck